

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

MACSTEEL SERVICE CENTERS U S A,

Respondent.

CASE NO. OSH 2008-9

ORDER NO. 295

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) by conference call on September 29, 2008, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and John Recine and John Zerbe, for Respondent by telephone, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:
  - a. Whether Citation 1, Item 1a, including the characterization as "Serious" and the associated penalty of \$875.00, resulting from Inspection No. 311431712, was valid and proper.

Citation 1, Item 1a alleged:

29 CFR 1910.134(c)(1) was violated because:

The employer did not establish and implement a written respiratory protection program for the employee who was required to wear air purifying respirators.

- b. Whether Citation 1, Item 1b, including the characterization as "Serious" resulting from Inspection No. 311431712, was valid and proper.

Citation 1, Item 1b alleged:

29 CFR 1910.134(e)(1) was violated because:

The employer did not provide a medical evaluation to the employees who used the air purifying respirator for work. Without a medical evaluation the employee who wore the respirator was potentially exposed to serious health hazards due to underlying cardiac or pulmonary disorder.

- c. Whether Citation 1, Item 2, including the characterization as "Serious" and the associated penalty of \$875.00, resulting from Inspection No. 311431712, was valid and proper.

Citation 1, Item 2 alleged:

29 CFR 1910.304(g)(5) was violated because:

The ground pins of the plugs in two metal standing industrial fans were missing thus potentially exposing the employees to serious electrical hazards.

- d. Whether Citation 2, Item 1, including the characterization as "Other", resulting from Inspection No. No. 311431712, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.134(f)(2) was violated because:

The employer did not provide fit testing to the employee who used the air purifying respirator thus potentially exposing the employee to serious chemical and health hazards.

- e. Whether Citation 2, Item 2a, including the characterization as "Other", resulting from Inspection No. 311431712, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.134(k)(3) was violated because:

The employer did not provide training to the employee prior to the use of respirators thus potentially exposing the employee to serious chemical and health hazards.

- f. Whether Citation 2, Item 2b, including the characterization as "Other", resulting from Inspection No. 311431712, was valid and proper.

Citation 2, Item 2b alleged:

29 CFR 1910.134(k)(5) was violated because:

The employer did not provide annual retraining to the employee who wore respirators for work thus potentially exposing the employee to serious chemical and health hazards.

2. The deadline for filing of the parties' final naming of witnesses is **October 29, 2008**. Each party shall file with the Board the original and four copies of its list of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, with a certificate of service to the other party, by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **December 1, 2008**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **January 13, 2009 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. MACSTEEL  
SERVICE CENTERS USA  
CASE NO. OSH 2008-9  
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DATED: Honolulu, Hawaii, October 1, 2008.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn Kuwabe, Deputy Attorney General  
John Zerbe